

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  TWIN CITY CAPITAL, D/B/A SMALL BUSINESS AMERICA,  Respondent.	DOCKET NO. FCU-03-63
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**ORDER DOCKETING FOR FORMAL PROCEEDING  
AND REQUESTING RESPONSE**

(Issued January 27, 2004)

On December 31, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-241, involving Twin City Capital, d/b/a Small Business America (Small Business America), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which is a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On October 28, 2003, the Board received a complaint from Reuter's Red Power (Reuter) by its attorney, George Eichhorn, alleging that Reuter's subscribed long distance service had been changed to Small Business America without proper authorization. Board staff identified the complaint as C-03-241 and, pursuant to Board rules, on October 30, 2003, forwarded the complaint to Small Business America for response.

Small Business America responded to the complaint on November 14, 2003, stating that its record showed that one of its sales agents spoke with Ms. Jan Winker, an employee of Reuter, on September 2, 2003, regarding changing Reuter's telephone service to Small Business America and that Ms. Winker agreed to switch Reuter's long distance service. Small Business America also stated that a third-party verification was obtained to authenticate the sale. Small Business America provided a copy of the third-party verification and stated that it had issued credits totaling \$1,243.53 to Reuter.

On November 14, 2003, Board staff forwarded a copy of the third-party verification to Mr. Eichhorn and Ms. Winker, asking that they review the tape and respond in writing by December 1, 2003. A response from Mr. Eichhorn and Ms. Winker dated December 1, 2003, was received by Board staff on December 3, 2003, wherein Ms. Winker verified that her voice was on the verification tape, but denied that she agreed to change long distance services. The response also stated

that Ms. Winker was led to believe that the sales agent for Small Business America actually worked for Qwest Corporation (Qwest).

On December 18, 2003, Board staff issued a proposed resolution describing these events and proposing that the credit offered by Small Business America represented a fair resolution of the situation. No party other than Consumer Advocate has challenged the staff's proposed resolution.

In its December 31, 2003, petition, Consumer Advocate asserts that the proposed resolution is not supported by the facts of the underlying complaint and that sufficient reasons exist to merit an investigation into the matter. In addition, Consumer Advocate asserts that other slamming complaints received by Board staff have named Small Business America as the alleged violating company. Consumer Advocate requests that the Board docket this complaint for a formal proceeding and impose civil penalties on Small Business America. Small Business America has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date as well as the additional slamming complaints made against Small Business America and finds that there is sufficient information to warrant further investigation in this matter. The Board will delay establishing a procedural schedule until April 2, 2004, and allow Small Business America the opportunity to respond to the allegations raised in Consumer Advocate's petition.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 31, 2003, identified as Docket No. FCU-03-63, is granted and docketed for formal proceeding.

2. Twin City Capital, d/b/a Small Business America, is directed to file a response to Consumer Advocate's petition on or before April 2, 2004.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27<sup>th</sup> day of January, 2004.